Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 75-1735

MARY WILLIAMS, ET AL.,
Appellants,

vs.

JOHN R. JONES, ET AL.,

Appellees,

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF FLORIDA

MOTION TO DISMISS OR AFFIRM

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PRELIMINARY STATEMENT

The Appellants herein, Plaintiffs in the Circuit Court and Appellants in the Florida Supreme Court, will be referred to as the "Taxpayers." The Appellees herein were Defendants in the Circuit Court, Appellees in the Florida Supreme Court, and will be referred to herein, where necessary to refer to each of the Defendants individually by name, as appears in the caption of the case. Where referred to collectively, herein or as embracing all appellees, all appellees will be referred to as the "State."

JURISDICTION

The Taxpayers have appealed from a decision of the Florida Supreme Court styled Williams, et.al. v. Jones, Fla. 326 So.2d 425, decided December 17, 1975, rehearing denied March 4,1976. The statute under attack has been previously before the United States Supreme Court in the case of Straughn et. al. v. Camp, Fla. 293 So.2d 689, 419 U.S. 891, 42 L.ed 2d 135, 95 S.Ct. 168.

The statutes in that case and the case at bar emanated through the enaction of Ch. 71-133, Laws of Florida, and the specific statutes under attack here were part and parcel of said law. In the Straughn v. Camp case, supra, the Supreme Court dismissed the appeal for want of a substantial federal question. It is the position of the State that the questions presented by this appeal are also plainly insubstantial and that the appeal should

be dismissed, or in the alternative, the Court should affirm the lengthy and well-reasoned decision of the Florida Supreme Court. The Florida Supreme Court upheld the various statutory provisions attacked by the Taxpayers in a 7-0 decision.

Accordingly, pursuant to Rule 16, Supreme Court Rules, the State hereby moves that the appeal be dismissed because it does not present a substantial federal question, or in the alternative, that the Supreme Court decision sought to be reviewed by the Taxpayers, be affirmed because it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

The Taxpayers challenge the validity of §196.001(2), and §196.199(6), F.S., as being repugnant to the United States Constitution denying the Taxpayers equal protection of the law under the 14th

Amendment of the United States Constitution. In their notice of appeal, Taxpayers indicate that they are appealing the decision of the Supreme Court of the State of Florida upholding the validity of §196.001(2), §196.199(6), and §196.199(7)(a), F.S., but since their brief does not mention or attack §196.199(7)(a), F.S., it is presumed that the Taxpayers have abandoned their contentions with regard to that section.

It is the position of the State that the questions the Taxpayers seek to have reviewed are so wanting in substance as not to need further argument, in view of previous decisions of the United States Supreme Court on the same points of law. Hodges v. Snyder, (1923) 43 S.Ct. 435, 261 U.S. 600, 67 L.ed. 819; City of Boston v. Jackson, Mass. 1922, 43 S.Ct. 129, 260 U.S. 309, 67 L.ed. 274; Missouri Pac. R.Co.v. Castle, Neb. 1912, 32 S.Ct.

606, 224 U.S. 541, 56 L.ed. 875; Delpozo v. Wilson Cypress Co. Fla. 1925, 46 S.Ct. 57, 269 U.S. 82, 70 L.ed. 172; Stotland v. Pennsylvania, Pa. 1970, 90 S.Ct. 1552, 398 U.S. 916, 26 L.ed. 2d 83; and Straughn v. Camp, supra.

ARGUMENT

POINT I

BASED ON PRIOR UNITED STATES SUPREME COURT DECISIONS, TAXPAYERS' APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION AND IT IS MANIFEST THAT THE QUESTIONS ON WHICH THE DECISION OF THE CAUSE DEPENDS ARE SO UNSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT.

AS TO §196.001(2), F.S.

The Taxpayers contend that this section of the Florida Statutes is unconstitutional discriminating against the Taxpayers and denying them equal protection of law because the law does not apply to all leasehold interests.

In response to this contention, the Florida Supreme Court after having previously stated in the first paragraph that the Circuit Court had passed directly upon the validity of §196.001(2), §196.199(6), F.S., and

§196.199(7), F.S., stated at page 431:

> The result obtained through application of Sections 196.001(2) and 196.199, Florida Statutes, is to require that the leasehold interests defined therein shall be taxed at a just valuation like 'all other property' in the state. To accept the appellants' contention that the Legislature is without power to so classify such leasehold interests as real property would not only result in such leasehold interests being taxed on the reduced intangible personal property ad valorem rate but would also deprive the political subdivisions wherein the leaseholds are situated from raising revenues from such sources in order to defray the costs of the services supplied to the users thereof, services which include, especially, the education of the children of such users. The holder of a lease on Santa Rosa Island requires no less police protection, fire protection or education of his or her children than does his or her neighbor in the county who occupies under a fee simple title. But if appellants' argument is

> accepted the revenues derived from the tax of a leasehold as intangible personal property must constitutionally be paid into the coffers of the state rather than local political subdivision. See Article VII, Sections 1 and 9. The Legislature clearly has the power to classify so that all property devoted to private use is treated on a parity and, therefore, there is an equitable distribution of the tax burden. Basically, the appellants contend for a constitutional exemption from ad valorem real estate taxation where none exists and, if it did, such an exemption would undoubtedly be discriminatory and violative of the equal protection provision of the Florida and United States Constitutions. (e.s.)

The classification of private leasehold interests in governmentally owned property serves the function and purpose of requiring all possessors or users of real property to pay ad valorem real property taxes because of such use. Were it not for the

requirements of the statute, persons leasing property from governmental bodies would not be required to pay tax because the property itself is either exempt or immune. This means that such a private leaseholder of governmentally owned lands would be placed in a much better competitive position than a private leaseholder leasing from a private land owner because in the latter situation ad valorem real property taxes are either paid by the lessor by virtue of his ownership, or by the lessee by virtue of the lease agreement. It is patently obvious that such a situation is unfair to the lessee from a private lessor. The effect of the Florida Statutes is to require that all property being used for a private

purpose has to bear its just portion of the ad valorem tax burden of the County and School Board and other public entities levying an ad valorem property tax. Instead of creating discrimination, the statutes eliminated it as was recognized in the Florida Supreme Court at page 432; that is, all property devoted to private use is treated on a parity so that there is an equitable distribution of the tax burden. The Supreme Court continued at page 432:

> Which brings us to the assertion by the appellants that the statutory sections under attack are discriminatory as to them and deprive them of the equal protection mandated by the Florida Constitution and the 14th Amendment of the United States Constitution. Such assertion

must be rejected because it has been long recognized that the Legislature, within developed constitutional limits, has broad powers of classification for taxation purposes so as to bring about a fair contribution by all property interests to the tax burden necessary to provide the revenues for the functioning of government. As stated by Mr. Justice Roberts in Just Valuation & Taxation League, Inc. v. Simpson, 209 So.2d 229 (Fla.1968), where the separate classification of intangible personal property was under sttack, '. . . Decisions by the federal courts recognizing the power of the state to classify property for the purpose of taxation are legion. . .' The United States Supreme Court cases cited in this opinion are clearly representative of the cases reflecting that there is no United States constitutional prohibition against the exercise of broad powers of classification by a state legislature for purposes of taxation. (e.s.)

This statement is squarely consistent with many United State Supreme Court decisions on the question of state legislative power to classify for tax purposes so as to achieve an equitable distribution of the tax burden.

The Court cited the case of American Oil Company v. Neill, 380 U.S. 451, 85 S.Ct. 1130, 14 L.Ed.2d 1 (1965), stating at page 432:

> 'When passing on the consitutionality of a state taxing scheme it is firmly established that this Court concerns itself with the practical operation of the tax, that is, substance rather than form. (Citations omitted) This approach requires us to determine the ultimate effect of the law as applied and enforced by a State or, in other words, to find the operating incidence of the tax.'

The practical effect of Sections 196.001(2) and 196.199, Florida States, is to withdraw

exemption from certain users of property and to impose an ad valorem real property tax upon them consistent with the tax imposed upon persons who make similar uses of property. (e.s.)

The Court recognized and discussed the classifications created by the Statutes at page 430 as follows:

> The classifications created by Section 196.001(2) and Section 196.199, Florida Statutes, result in the holders of leases of publicly owned lands bearing their fair share of the tax burden, thus placing them on a parity with other real property in the private sector devoted to similar uses. (e.s.)

Thus, it is readily apparent that instead of producing discrimination, the present laws prevent it.

If such leaseholds were not taxed, the result would be that the lessees from private property lessors would

be placed in a disadvantagous competitive position compared to lessees from governmental lessors. For instance, lessees of privately owned residences, motels, or other commercial establishments located along the Miracle Strip near Panama City have to take into consideration ad valorem taxes when entering into such leases. Were it not for the laws under attack, lessees of residences, motels, or other commercial establishments on Santa Rosa Island would not incur, either directly or indirectly, the impact of ad valorem property taxes. The unfairness of such is readily apparent when considering the motels involved in the present suit. The motels are allowed to charge the going rates for such motels

anywhere on the beaches. Thus similar motels on Panama City Beach and Pensacola Beach would be charging identical rates but the motel at Panama City would be realizing less profit per room because of the ad valorem tax impact.

Assume further that both motels were operated by lessees under 99 year leases, and that both leases contained provisions requiring the lessees to pay any and all ad valorem taxes levied. The inequity and unfairness is readily apparent if the lessee of the government owned land is not taxed. Were it not for the statutes taxing such leaseholds, the private property leaseholder would be discriminated against in favor of the government lessee.

The impact of the laws is clear. It requires taxation of all property not used for exempt purposes.

In the case of Frank Walters v. City of St. Louis, 347 U.S. 231, 98 L.Ed. 660, 74 S.Ct. 505, the court said:

> The power of the State to classify according to occupation for the purpose of taxation is broad. Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary. (e.s.)

In the instant case, the test is met. Leaseholders of government property are taxed because otherwise they would be treated to a tax advantage compared to leaseholders

of private property. Additionally, were they not taxed, property used for private purposes would be able to avoid the impact of tax.

Further therein the court stated:

> Our disapproval of the wisdom or fairness of so doing is not a ground for interference. When a state legislature acts within the scope of its authority it is responsible to the people, and their right to change the agents to whom they have entrusted the power is ordinarily deemed a sufficient check upon its abuse. When the constituted authority of the State undertakes to exert the taxing power, and the question of the validity of its action is brought before this court, every presumption in its favor is indulged, and only clear and demonstrated usurpation of power will authorize judicial interference with legislative action. (e.s.)

Later the court stated:

> In its discretion a state may tax all, or it may tax one or some, taking care to

> accord to all in the same class equality of rights. (e.s)

In the instant case all leaseholders of government property are taxed identically.

The court continued by quoting from the landmark case of Madden, Executor v. [Commonwealth of] Kentucky, 309 U.S. 83, 60 S.Ct. 406, 84 L.Ed. 590, as follows:

> 'The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that "the Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation," and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax

programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.' (e.s.)

Here, the tax scheme achieves an equitable distribution of the tax burden by requiring all leaseholders, whether government or private, to bear the impact and burden of property taxes either directly or indirectly.

The tax scheme produces equality of treatment and eliminates discrimination and inequities. It eliminates the unequal distribution of tax burden which results when private individual leaseholders use public property for private purposes by taxing such use in the form of an ad valorem property tax on the leaseholder. Thus the taxation of such leaseholds is not only justified but is demanded to avoid the inequities which result if they are not taxed.

These basic principles were recognized by the United States Supreme Court in the case of Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 2 L.Ed.2d 480, as follows at page 232:

> 'If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law. That a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction, or difference in state policy.' (e.s.)

The differences or distinctions here are real as demonstrated previously. The burden placed on the taxpayers discussed in the Madden, Executor case, supra, of negativing every conceivable basis which might support the present legislative arrangement has not been carried. The statutes at bar are clearly within the guidelines set down by the United States Supreme Court. The basis for the statutes and the classification of

private leaseholds in governmentally owned real property and subjecting of same to ad valorem real property taxation is for the purpose of achieving an equitable distribution of the tax burden insuring that all persons using property for private purposes bear their just burden of taxation for the support of the governmental unit involved. This means that persons or corporations leasing motels or other commercial establishments on Santa Rosa Island, which is owned in part by Escambia County, are treated identically to persons or corporations leasing motels or other commercial establishments from private land owners in other beach locations throughout the State of Florida. Thus the private lessee leasing from a governmental unit and the private lessee leasing from a

private individual are treated identically insofar as the tax burden on the property is concerned.

Accordingly, it is readily apparent that the pronouncements of the Florida Supreme Court are squarely consistent with the pronouncements of the United States Supreme Court on the questions presented. In fact, the Florida Supreme Court recognized and followed many of the United States Supreme Court decisions cited in the case of Just Valuation and Taxation League v. Simpson, Fla. 209 So.2d 229. Accordingly, it is patently obvious that the questions relating to equal protection of the law which the Taxpayers attempt to have reviewed by the United

States Supreme Court are wholly unsubstantial based on past decisions of this court. Thus, since the federal question presented is not substantial, the appeal should be dismissed, or in the alternative, the motion to affirm the judgment sought to be reviewed should be granted, since it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

AS TO §196.199(6), F.S.

All of the United States Supreme Court decisions and other decisions cited herein are equally applicable to the Taxpayers contentions as to §196.199 (6), F.S. Thus the previous pronouncements and quotations referring to such decisions are equally applicable here.

As to this statute, §196.199(6), F.S., the Taxpayers argue that the statute discriminates against holders of 99-year leaseholds compared to holders of leaseholds of a lesser term.

The standard enunciated in the Madden, Executor case, supra, requiring the taxpayer to establish that the legislative arrangement is invalid on every conceivable basis which might support it

simply has not been made. First, under Florida law, all real and personal property is required to be taxed at its just value following the criteria set forth in §193.011, F.S., except property which is allowed by the Constitution to be classified and taxed at a percentage of or less than just value. See Article VII, Sec. 4, Florida Constitution 1968 which allows for special treatment of agricultural land, land used exclusively for non-commercial recreational purposes, tangible personal property held for sale as stock in trade and livestock.

It is common knowledge that real property is comprised of a bundle of rights consisting of many and numerous distinct interests. These rights may include the right of use, possession,

occupancy, ingress, egress, alienation, and various rights in the sub-surface and minerals found in or under real property. It is common knowledge that the 99-year lease period is the most common period for long term leases in real estate custom as opposed to a 97, 95, or 93 year duration or some lesser period. All the Legislature has done is to equate such a 99-year lease period with ownership for valuation purposes recognizing that a lessee under such a lease arrangement has virtually the same rights in and to the real property as would the owner. This is entirely consistent with logic and reason. Such leassees are allowed to sell their rights under the lease to purchasers and suffice it to say that the sales of such rights often bring a tidy sum.

Then too, many of the leases contain renewal options for an additional 99 years.

Additionally, under the Florida Constitution, Article VII, Sec. 6, the Florida Constitution authorizes a homestead exemption on leaseholds initially for a term in excess of 98 years, which would be 99 years or more. So on the one hand the taxpayers owning and living in residences on Santa Rosa Island would supposedly contend that they should be allowed to claim homestead tax exemption on the property as if they owned it, but should not be taxed as if they owned it. The inconsistency of this contention is patently obvious.

Furthermore, the Taxpayers never contended in the lower court and cannot contend now that they have been taxed

higher than just value. The allegations of the Taxpayers' complaint relate solely to the manner of valuation. Nowhere therein is it suggested that a 99-year lease is not valued at fair market value, or that a 24-year lease is not valued at fair market value. Furthermore, there is no specific factual allegation that leases of less than a 99-year duration, if taxed as if owned, would produce a different amount of taxes.

In all instances, the criteria found in §193.011, F.S., would be followed to arrive at just value. The willing buyer, willing seller concept would apply regardless of the duration of the lease. The rights in the property covered under any particular lease would alter the market value of the lease as would the duration of the lease, but the

just value concept would not change. For instance, a parcel of property held under a 99-year lease with a 70 year remaining time period would be based on the fair market value of such remaining property rights which would in turn be based in large part on comparable sales of similar property which would always reflect the market for parcels of property subject to leaseholds and whatever restrictions were found in the leases. The duration of the lease could affect the fair market value or just value of the property because it would affect the sales price. However, the same would be true of a fee simple deed incumbered by numerous deed restrictions. There are matters which may affect the just value in either situation.

The Taxpayers have not contended or cited any specific situation where the

commands of §196.199(6), F.S., have resulted in their property being assessed at greater than the fair market value of the rights contained in the unexpired portion of the lease agreement.

In short, the Florida Constitution treats leaseholds for 99 years or more as if the property were owned for homestead tax exemption purposes. The statute treats such leaseholds as owned for taxation purposes. If such is ridiculous, as asserted by the Taxpayers at page 15 of their brief, then why don't such Taxpayers contend that they have no right to claim homestead tax exemption if they reside on the Island?

The Taxpayers' brief is replete with adamant statements which are inconsistent with the United States Supreme Court decisions. For instance, at page

17 of said brief, it is stated that "it is beyond the power of the legislature to levy an ad valorem tax on one class of property (a leasehold interest) based upon the value of a different class of property (fee)." All of the United States Supreme Court decisions cited herein point out that the state does have the power to classify for tax purposes, and in fact, in matters of taxation, the power to classify is recognized in its broadest form.

At page 16 of the Taxpayers' brief, the case of Devore v. Lee, 156 Fla. 699, 24 So.2d 234, is cited for the position that the difference between a long term lease and a short term lease is not a proper basis for the determination of the taxibility of a lease. That case has nothing to do with real property

taxation. It involved documentary stamp tax and the question of whether the lease agreement was subject to documentary stamp tax so it is immaterial to the issues of the case at bar.

At page 17 of their brief, the Taxpayers cite the case of Interlachen Lakes Estates, Inc. v. Snyder, Fla. 304 So.2d 433. In that case the Supreme Court held invalid a statute, §196.062 (1), F.S., commonly referred to as the Rose Law, on the ground that the effect of the statute was to tax the property held by developers at a percentage of or less than just value which violated the Florida Constitution which commanded that all property be assessed at just value. There is no attempt in the case to assess any property at a percentage of or less than just value. In fact,

what the Taxpayers are contending; that is, that they should be exempt from tax, would be impermissible under such provision because under Florida law all property used for private purposes must be taxed at its just value based upon such use.

Beginning at page 10 of their brief, the Taxpayers list various provisions of the leases in an attempt to show that the property is substantially burdened by restrictions. Suffice it to say that numerous deeds contain similar restrictions, for instance, as to the keeping of livestock. And it is common knowledge that all property is held subject to the police power to regulate for health purposes. Most metropolitan cities today have ordinances which require that property be kept in

good repair, free from trash, debris, and obstruction, and generally allow the city or county to go into the property and take appropriate measures to clean up the property, or cut the grass and then bill the property owner.

As to the requirement of maintaining proper books and records for accounting purposes, it is common knowledge that leases involving commercial establishments contain such provisions because in many instances the lease payment is based in part on the amount of business done or the gross receipts derived therefrom.

In short, the lease provisions are not unique.

For the same reasons as expressed herein regarding §196.011(2), F.S., it is patently clear that the federal

question presented is unsubstantial and the appeal should be dismissed, or in the alternative the motion to affirm the judgment of the Florida Supreme Court sought to be reviewed, should be granted since it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

CONCLUSIONS

In 1949, the Legislature of the State of Florida through Ch. 25810, Laws of Florida, 1949 Special Acts, granted a tax exemption to all the real and personal property rented or leased to others by Escambia County, Florida, and the Santa Rosa Island Authority from state, county or municipal ad valorem property taxes of every kind. In 1971, through the enaction of Ch. 71-133, Laws of Florida, the Legislature took away that exemption. Understandably, the Taxpayers did not want to lose it, but the right to tax and the right to exempt are purely legislative powers and no taxpayer has any perpetual right to tax exemption, including the Taxpayers in the case at bar. For all the above and foregoing reasons and based on all the authorities cited herein, the State respectfully moves that this Court dismiss the appeal or that it affirm the

judgment sought to be reviewed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Dismiss or Affirm has been furnished by U. S. Mail to J. McHenry Jones, Esq., P. O. Box 732, Pensacola, Florida 32592, this 21st day of June, 1976.

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